

Claims 1-12 stand rejected under 35 U.S.C. 103(a) as obvious over Riedel et. al. U.S. 4,793,003 in view of Kenndoff et al US 5,844,013, further in view of Martz WO 89/01345 and Kohn et al US 4,709,695.

Applicants invention is a light occlusive eye patch having at least one layer of a foamed material provided on the lower side with a skin-compatible self-adhesive layer.

Such an eye patch is not disclosed or suggested in any of the references cited by the Examiner, whether taken individually or in any combination.

The primary reference cited by the Examiner, Riedel '003, concerns a light occlusive eye patch made out of a **porous polymeric film**, and has nothing to do with a foam. The Examiner, however, seems to think that, in the absence of a recitation of a particular size of the cells in Applicants' foam, the porous film will function as a foam layer.

This makes absolutely no sense, legally or technically. There is nothing in the Riedel reference that would support the Examiner's speculation that the porous film would function as a foam. A porous film is not a foam, and there is nothing in a porous film that would suggest a foam.

In order to more specifically understand what a porous film is, one might want to look at the patents cited in the '003 reference as teaching the porous films used in the patches of the '003 reference. A copy of U.S. Patent 3,870,593, cited at col. 4, line 24 of

the '003 reference, is annexed hereto. From this patent, one can see that the porous films are films that are formed by dispersing finely divided particles of e.g. calcium carbonate into a polymer; forming a film of the filled polymer by, for example, extrusion; and then stretching the film to induce an interconnecting porous structure in the film.

Thus, the porous films are essentially films with holes in them.

A film with holes is not a foam.

A foam is a structure formed of individual cells, which can be closed cells, open cells, or some of each.

Note also, as previously mentioned, Riedel's porous films must be relatively thin, i.e., in the range of 1 to 8 mils (col. 4, line 16).

Applicants' foams must have a minimum thickness of 400 micrometers (page 2, line 22). Thus, Applicants' minimum foam thickness is at least about 15 mils; which is twice Riedel's maximum thickness.

In this regard, the Examiner's attention is respectfully directed to Applicants Example 1. In this Example, the Examiner will see that the foamed structure had a thickness of 0.8 mm. Since 1 mil = 0.0254 mm; the foam of Example 1 has a thickness of about 31 mils. This 31 mil thick foam had a water vapor permeability of 5500 g/m²

Compare this to Riedel's Example 1, wherein a porous film having a thickness of 0.09 mm (i.e., 3.5 mils) had a water vapor permeability of 3,000 g/m².

Thus, Applicants' patch, which was about ten times as thick as that of the Riedel reference, still had greater water vapor permeability.

If Riedel's porous film was functionally equivalent to Applicants' foam, as the Examiner seems to argue; Applicants' foam of Example 1, which is about ten times thicker than Riedel's film of his Example 1, would have been expected to have had 1/10 of the water vapor permeability; or about 300 g/m².

That Applicants' foam had a water vapor permeability of 5,000 g/m² instead of 300 g/m² would be truly surprising and unexpected, based on the Examiner's logic.

One still must ask, however, why any person skilled in the art reading Riedel would be led to substitute a foam for Riedel's porous film; especially since Riedel emphasizes that the film should not exceed 8 mils in thickness.

The Examiner cites Kenndoff '013 as teaching a wound care dressing such as wound plasters comprising a polyurethane backing film and a polyurethane gel foam together with a filler, such as a chalk.

The Examiner does not say, however, what it is about Kenndoff or Riedel that would

lead any person skilled in the art to use Kenndoff's foam in Riedel's eye patch, or how this could be done.

The Kenndoff reference concerns a wound care dressing that absorbs and binds aqueous liquids. In Kenndoff, a polyurethane gel foam (15-62% crosslinked polyurethane and 85-38 % polyhydroxyl compounds) which comprises a water absorbing material , is used to protect wounds from drying out and to absorb wound discharge. This has nothing to do with light occlusiveness or with permeability to water vapor and air.

There is absolutely nothing in Kenndoff that would make his foam attractive to anyone considering an eye patch. Water absorption and retention is not what one is looking for in a light occlusive eye patch!

Kenndoff teaches a specific foam for a specific use; the absorption of wound discharges. Why would anyone want to use this in Riedel's light occlusive eye patch?

Kenndoff and Riedel have nothing in common, and there is nothing that would suggest that the disclosure of either one of them be combined with the other. When one reads Riedel, the concept of a foam as a substitute for Riedel's porous film just does not make any sense. Nothing that Riedel is trying to achieve can be found in Kenndoff.

Then the Examiner cites Martz but, as in with Kenndoff, does not say how anything taught by Martz can or could be used in Riedel's eye patch; or how it can be combined with

Riedel and Kenndoff to arrive at Applicants' invention. Martz teaches a composite of a film and a nonwoven fabric as a surgical dressing that is impermeable to liquids, but is permeable to moisture vapor. Martz can include a "pad" of gauze, foam or other absorptive device. Thus, the only mention of a foam in Martz is in connection with an absorptive pad, such as is found on common first aid bandages. There is simply no way that Martz's composite structure of adhesive layer, film and nonwoven fabric, with or without an absorptive foam pad, could be combined with Riedel and Kenndoff to arrive at Applicants' novel light occlusive dressing.

Why, for example, would anyone take the simple mention of a "foam" at page 15 in the Martz reference, in connection with absorptive devices in the dressing, as a suggestion of a light occlusive eye patch? How does that relate to Kenndoff's polyurethane gel foam? What do either have to do with an eye patch? What in any of these references would suggest the use of a foam in an eye patch?

Finally, the Examiner cites Kohn. Kohn, however, teaches only an adhesive base to which other things can be removably attached. The base has an adhesive on one side, which can be used to attach the base to the skin. Then, on the other side it has e.g. Velcro (TM) to which other things, such as a pad, can be attached and removed.

Kohn's base can be in the form of an oval ring. Kohn therefore, in one embodiment (Fig. 1) comprises a "reattachable eye patch", having two separate parts; an adhesive base and a protective covering. The protective covering is coupled to the base via the Velcro lining on the base; so that the base can be removed and replaced as needed.

Kohn does not mention any foam for any use.

Here again, the Examiner has not said how Kohn relates to the present invention, or how Kohn can be combined with Riedel, Kenndoff and Martz to result in Applicants' light occlusive eye patch comprising a layer of foamed material? The fact is, it can't.

Even if the Examiner were able to find a way to reassemble bits and pieces of the references cited and somehow arrive at Applicants' invention, which, as shown above, she has not been able to do; obviousness would not be shown. In this case, however, even hindsight reconstruction is not possible.

No combination of Riedel, Kenndoff, Martz and Kohn can lead to Applicants' invention, and no combination of elements from these references has been shown that could possibly lead in the direction of Applicants' invention.

Applicants novel light occlusive eye patch having at least one layer of a foamed material is not obvious over Riedel, Kenndoff, Martz and Kohn, whether taken individually or in any combination, and the rejection of claims 1-12 under 35 U.S.C. 103(a) as obvious over said combination of references should now be withdrawn.

Applicants note with appreciation that claim 13 is allowed.

For the reasons discussed above, claims 1-12 are also in condition for allowance.

In view of the present amendments and remarks it is believed that claims 1-13 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.


CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this amendment is required, applicants request that this be considered a petition therefore. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

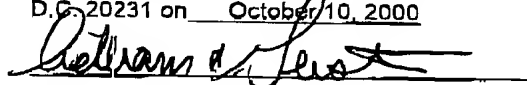
Respectfully submitted
NORRIS, McLAUGHLIN & MARCUS

By 
William C. Gerstenzang
Reg. No. 27,552

WCG:tmo

660 White Plains Road
Tarrytown, New York 10591-5144
(914) 332-1700

I hereby certify that this correspondence is being transmitted via facsimile addressed to BOX AF, Assistant Commissioner for Patents, Washington, D.C. 20231 on October 10, 2000



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